

ORDINANCE NO. 12-11

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 78 ENTITLED "SOLID WASTE" OF THE CODE OF ORDINANCES AND IN PARTICULAR, REVISING ARTICLE II ENTITLED "NUISANCES" BY ADDING A NEW SECTION ENTITLED "REGISTRATION OF PROPERTIES WITH MORTGAGES IN DEFAULT BY MORTGAGEE" CREATING AN OBLIGATION TO REGISTER, INSPECT, MAINTAIN AND SECURE PROPERTIES WITH MORTGAGES IN DEFAULT ACCORDING TO THE MAINTENANCE AND SECURITY STANDARDS SET FORTH THEREIN; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the mortgage foreclosure crisis has resulted in a rising number of vacant and abandoned properties negatively impacting neighborhoods already facing unemployment, homelessness and other problems that result from financial crisis; and

WHEREAS, foreclosed homes left vacant and abandoned quickly succumb to the forces of nature and the elements, with overgrown grass, unsanitary pools, broken windows and opened doors, creating an opportunity for squatters, vandalism, and increasing crime negatively impacting the value of homes in our community; and

WHEREAS, the City of Hialeah is challenged to find a party to bear the burden of maintenance and security of these vacant and abandoned properties in foreclosure to correct the negative impacts for the health, safety, and general welfare of its residents; and

WHEREAS, the City of Hialeah finds that the mortgagee is in the best position to adequately maintain and secure vacant and abandoned properties in foreclosure, thereby protecting its security in the value of the property, until such time as the default is cured or a new buyer assumes the responsibility of home ownership; and

WHEREAS, registration of properties with mortgages in default will protect against deterioration and devaluation of property, lessen the negative impact of foreclosure on our neighborhoods, and is in the best interest of health, safety and general welfare of the community and the residents of the City of Hialeah.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 78 entitled "Solid Waste" of the Code of Ordinances of the City of Hialeah, Florida, particularly Article II. Nuisances, is hereby amended to read as follows:

Chapter 78

SOLID WASTE

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ARTICLE II. NUISANCES

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Sec. 78-36. Registration of properties with mortgages in default by mortgagees

(a) Any mortgagee who holds a mortgage on any real property located within the city, regardless of the property's land use designation, zoning district, or nature of the use or uses given to the structures found on the property, and who has determined that such mortgage is in default, has issued a notice of default, has recorded a lis pendens, or taken any other legal action to enforce its right to accelerate the debt or foreclose its interest in the property, shall register the property with the city's code compliance division. The mortgagee must register the property within 15 days from the date it first gives notice to the debtor/mortgagor of its intent to accelerate the debt and/or foreclose its interest in the property. Together with the registration, the mortgagee must submit an annual fee of \$100.00 for each property registered. The mortgagee must designate an individual or entity to act as its local agent who shall be responsible for inspecting, maintaining and securing the property according to the provisions of this section and be available to be contacted by the city during regular business hours. The local agent must have a place of business in Miami-Dade County. All registrations must state the property address, the mortgagee's name, address, email address and telephone number, the name of an agent responsible for the property's management, agent's mailing address, email address and telephone number. If the local agent designated by the mortgagee is an entity, the registration must identify an individual and that individual's position within the entity. The individual

must have the necessary authority within the entity to make all necessary decisions and take all necessary actions to discharge the mortgagee's obligations pursuant to this section. Postal box office numbers cannot be utilized as mailing addresses. Any change in the information required must be reported to the code compliance division within 10 days from the date of the change. If the mortgagee who first registers the property assigns the mortgage in default to another, the mortgagee must notify the city of the assignment, the identify and contact information of the assignee. The assignee must re-register the property, pay the registration fee, designate a local agent and provide all the information required for registration.

(b) The mortgagee, through its designated local agent, must perform an inspection within 15 days from the date the mortgagee first gives notice to the debtor/mortgagor of its intent to accelerate the debt and/or foreclose its interest in the property to determine whether it is vacant or abandoned. Vacancy shall be determined when the property is no longer occupied by persons with the lawful right to occupy the property or persons named as party-defendants in a foreclosure action affecting the property. Abandonment shall be determined when one or more conditions on the property, such as failure to keep any one of the maintenance and security standards described herein, leads a reasonable person to believe the property is abandoned. The local agent must continue to inspect the property for this purpose every 30 days from the date of the agent's first inspection. If at any time the property becomes vacant or abandoned, the mortgagee, through its designated local agent, shall be responsible to perform the work necessary to bring the property into compliance with and maintain and secure the property according to the standards established in this section.

(c) The mortgagee's obligation to register, inspect, maintain and secure properties with mortgages in default shall continue for as long as the mortgage remains in default, whether the mortgage in default has been foreclosed or not, until such time when the default is cured, the property is sold to a third party at a foreclosure sale, the property is sold or transferred to a third party with the consent of the mortgagee who registers the property. The mortgagee, through its designated local agent, must notify the code compliance division of such sale, transfer, or

occupancy. There will be no refund of a fee paid to the city. The mortgagee shall be under a continuing obligation to register, inspect, maintain and secure the property if the mortgagee assumes title to the property securing the mortgage in default.

(d) *Maintenance and security standards.* Properties registered pursuant to this section must be kept in accordance with the standards set forth in sections 78-31, 78-32 and 78-34 of the Code. In addition, properties shall be maintained free from weeds, overgrown grass or brush, dead vegetation, garbage, trash, junk, debris, any accumulation of newspapers, circulars, flyers, discarded personal items such as furniture, clothing, appliances, or any other items leading a reasonable person to believe the property is not being properly maintained or is abandoned. Weeds, grass, brush, or dead vegetation shall not be over six inches in height. The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure. Pools, spas, fountains, ponds, or outdoor aquariums shall be kept in working order so as to prevent the creation of an environment for the breeding of mosquitoes or other unsanitary environment through the accumulation of stagnant or polluted water, pollutants and/or debris. Water clarity shall be such that the bottom of the pool or spa can be seen from the pool or spa deck. If the pool or spa is emptied, then it must be securely covered. Doors, windows, gates, fences and all other openings of such size to allow a child or adult to access the interior of any structure on the property shall be kept locked and secured to prevent any trespassers, squatters or other unauthorized persons.

(e) Failure to register, inspect, maintain, or secure the property in accordance with the standards established in this section or failure to notify the city of any changes in material information required by this section is a violation of the Code and may be subject to enforcement by any means available to the city, including, but not limited to, a lot clearing lien, if applicable, and civil penalties provided in Chapter 22 herein.

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Inclusion in Code.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered, as appropriate, to conform to the uniform numbering system of the Code.

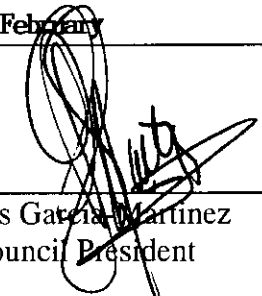
Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

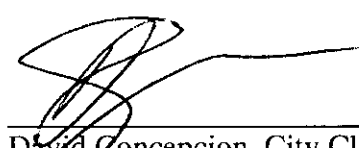
PASSED AND ADOPTED this 28th day of February, 2012.



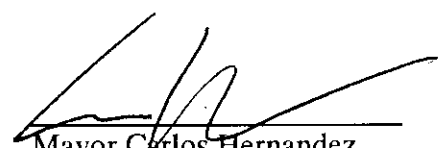
Isis Garcia Martinez
Council President

Attest:

Approved on this 7 day of March, 2012.



David Concepcion, City Clerk



Mayor Carlos Hernandez

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

~~Strikethrough indicates deletion.~~ Underline indicates addition.

SALE\LEGISLATION\2010-ORDINANCES\CODE AMENDMENTS\vacant-abandoned-foreclosed-homes-registration.doc

Ordinance was adopted by a 5-0 vote with Councilmembers, Caragol, Casals-Munoz, Gonzalez, Hernandez and Lozano voting "Yes", Councilmembers Cue-Fuente and Garcia Martinez absent.